Supreme Court, U.S.
FILED

No. 03 913 NOV 13 2003

IN THE

SUPREME COURT OF THE UNITED STATES

MARTIN A. LEHMAN - PETITIONER

vs.

BARBARA KORNBLAU et al. - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does 42 U.S.C. Section 1983 imposes a liability and provides a remedy and an implied cause of action grounded directly in the Constitution is not available or does 42 U.S. Section 1983 require the specific allegation of a violation of the Constitution or an Act of Congress? The United States Court of Appeals For The Second Circuit ruled a liability is imposed. Several other Federal Courts ruled specific violations of the Constitution or Acts of Congress must be alleged.

2. 42 Section 1985(3) requires a litigant to demonstate being a victim of a conspiracy "motivated by racial or related class-based discriminatory animus." Is the Fourteenth Amendment "not separate and distinct" and therefore also requires the litigant being a victim of conspiracy by action under authority of state law and in which a violation of the Fourteenth Amendment is alleged, demonstrate the it is "motivated by racial or related class-based animus,"? The District Court ruled that it was required.

3. Is a state prosecutor, who on his or her own initiative and intent, fabricates evidence and presents that evidence to a Grand Jury to secure an indictment acting within his or her scope of duty and therefore is granted absolute immunity from civil liability or not?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

MARTIN A. LEHMAN, ***Petitioner***

vs.

BARBARA KORNBLAU, individually and in her official capacity as an Assistant District Attorney of Nassau County, DENIS E. DILLON, individually and in his official capacity as District Attorney of Nassau County, FRANCIS D. QUIGLEY, individually and in his official capacity in the Nassau County District Attorney's Office, ROBERT L. EMMONS, individually and in his official capacity in the Nassau County District Attorney's Office, RODOLFO BARRION, individually and in his official capacity as a Nassau County Police Officer, JOSEPH MOLINELLI, J. ALGIERI, individually and in his official capacity as a Nassau County Police Officer, GEORGE V.

CATS, individually and in his official capacity as a Nassau County Police Officer, MARY FLYNN, individually and in her official capacity as a United States Postal Ispector, GEORGE ROBERTS, SCOTT JAFFER, LINDA FARRELL, PHILIP T. BLESSINGER, DAPHNE J. STASCA, ATLANTIC MUTUAL INSURANCE COMPANY, CIGNA INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, NATIONAL INSURANCE CRIME BUREAU, SUNNYDALE FARMS COMPANY, COUNTY OF NASSAU and UNITED STATES POSTAL SERVICE,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the jusdgement below.

OPINIONS BELOW

CASES FROM FEDERAL COURTS:

The opinion of the United States court of appeals appear at Appendix A and Appendix C to the petition and is unpublished BUT relies directly on and quotes a published 2d Circuit opinion published and repoerted; See Pauk V. Bd. of Trustees of City Univ. of New York, 654 F. 2d 856, 865 (2d Cir. 1981).

The opinion of the United States district court appears at Appendix B to the petition and is reported at; See Lehman v. Kornblau et al., 134 F. Supp. 2d 281.

JURISDICTION

CASES FROM FEDERAL COURTS

The date on which the United States Court of Appeals decided my case was May 21, 2003 and a copy of the decision appears at Appendix A.

A timely petiton for rehearing was denied by the United States Court of Appeals on the following date: September 19, 2003 and a copy of the order denying rehearing appears at Appendix C.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

CONSTITUTION:

1. THE FOURTEENTH AMENDMENT:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United states and the State wherin they reside. No State shall make or enforce any laws which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

2. THE FOURTH AMENDMENT:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches or seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

STATUES:

1. 42 U.S.C. Section 1983:

Every person who, under color of any statue, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges

or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,.....

2. 42 U.S.C. Section 1985

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire, or to go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the law, or equal privileges and immunities under the laws. .....in any case of conspiracy set forth in this section, if one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation aginst any one or more of the conspirators.

3. 28 U.S.C. 1343

(3) To redress the deprivation. under color of any State law, statue, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

STATEMENT OF THE CASE

1. BACKGROUND

On May21, 1997, the Petitioner was arrested charged with insurance fraud. On March 3, 1999 a jury acquitted the Petitioner on each and every charge.

On October 13, 1999, a civil lawsuit was filed alleging that the Nassau County District Attorney's office in conjunction with the United States Postal Service, several insurance companies and others conspired to deprive the Petitioner of his constitutional and stautory civil rights.

2. ELEMENTS OF THE CONSPIRACY

1) A contractual agreement between the Nassau County District Attorney's office and several insurance companies which stated the Petitioner, without any presumtion of innocence, was known to be a fraudulent doctor and evidence would be gathered for indictment and prosecution.

2) Large sums of monies would be transferred interest free from the insurance companies to the Nassau County District Attorney's office for periods up to eighteen months or more.

3) There will be perjury in a Search Warrant Application prepared by the Nassau County District Attorney's office and the United States Postal Service

4) There will be perjurious testimony by all three operatives under control of the Nassau County District Attorney's office and the United States Postal Service in the Grand Jury.

3. DISTRICT COURT SUMMARY JUDGEMENT

The motions by the defendants for summary judgement was granted in respect to allegations of a conspiracy. These related to 42 U.S.C. Section 1985 (3) and to Constitutional violations of the Fourteenth and the Fourth Amendments.

4. REASON FOR DISMISSAL UNDER 42 U.S.C. Section 1983 (3)

The District Court stated that there was no basis in law as the litigant (Petitioner) did not demonstrate a conspiracy "motivated by racial or related class-based discriminatory animus." See Graham v. Henderson 89 F. 3d 75, 82 (2d Cir. 1996) and Thomas v. Roach, 165 F.3d 137, 146 (2d Cir.1999). This is based upon United Brotherhood of Carpenters and Joiners of America, Local 610 AFL-CIO et al. v. Scott et al. 463 U.S. 825.

5. REASON FOR DISMISSAL OF CONSTITUTIONAL VIOLATIONS

The District Court said that the seventh cause of action which alleged the constitutional violations was "not separate or distinct" from violations under the cause alleging 42 U.S.C. Section 1985 (3) violations and therefore had no basis in law.

6. DISTRICT ATTORNEY'S FABRICATIONS TO THE GRAND JURY

The Petitioner testified in his own defense in the Grand Jury. A Grand Juror asked (page 138) "We saw the videotapes that Joseph Molinelli stated he did not go for his treatments. We also saw exhibits that contained bills of treatments that were not administered." "I would like to hear the explanation for billing of tratments that were not administered." Barbara Kornblau, the Assistant District Attorney of Nassau County who ran the Grand Jury admitted at the Civil Trial that there were no treatments billed for that were not given. These videotapes and exhibits are fabrications created by the Nassau County District Attorney's office.

7. RULING OF THE DISTRICT COURT

The District Court sustained objection to all questions relating to the fabrications introduced to the Grand Jury.

8. APPEAL TO THE SECOND CIRCUIT

The appeal to the Second Circuit were the following issues:

1) The District Court was erroneous when it stated that causes of action of violation of constitutional rights in a conspiracy is "not separate or distinct" than 42 U.S.C. Section 1985 (3) and require that the conspiracy be "motivated by racial or related class-based discriminatory animus."

THE SUPREME COURT DID NOT LIMIT VIOLATIONS OF THE FOURTEENTH AMENMENENT TO RACIAL OR RELATED CLASS-BASED DISCRIMINATORY ANIMUS

a) ***Breithaupt v. Abram A.M. 1957, 77 S.Ct. 408, 352, U.S. 432, 1 Ed. 2d 448***
Due process is not measured by the yard-stick of personal reaction or the sphymogram of the most sensitive person, but by the whole community sense of decency and fairness that has been woven into the fabric of acceptable conduct.

b) ***Buchalter v. People of State of New York, N.Y. 9943 63 S.Ct. 1129 319 U.S. 427, 87 L. Ed. 1492***
This clause requires that action by State through any of its agencies must be consistent with fundamental priciples of liberty and justice which lie at the base of our civil and political institutions.

2) The District Court was in error in dismissing allegations of violation of the Fourth Amendment in which multiple specific instances of perjury were cited in a Search Warrant Application at the stage of summary judgement when the truth of the complaint must be assumed.

3) The District Court was in error when it objected to the whole line of questioning in relation to the introduction of fabricated exhibits and

videotapes which were the creation of the Nassau County District Attorney's office.

THE SUPREME COURT DID NOT ADDRESS THIS ISSUE IN IMBLER v. PACHTMAN, 424 U.S. 409 47 L. Ed 2d 128

The Supreme Court in the above decision ruled on issues of whether a state prosecuting attorney was acting with the scope of his duties in initiating and pursuing a criminal prosecution and in presenting the state's case in relation to absolute immunity. It rule in those circumstances where the state prosecutor knowingly used false testimony and suppressed material evidence, he would still be acting within the scope of his duties.

The issue in this case is where the state prosecutor, created on her own, fabricated exhibits and introduced them to a Grand jury to secure an indictment. Is this acting within the scope of a prosecutors duties or is it so fundamentally inconsistent with principles of liberty and justice that it is not within the scope of a state prosecutor's duties.

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The United States Court of Appeals for the Second Circuit did not decide the issues appealed. Rather the District Court was affirmed when the Second Circuit relying on a previously published

Second Cicuit decsion that "when Section 1983 provides a remedy, an implied cause of action grounded directly in the Constitution is not available." See Pauk v. Bd. of Trustees of City Univ. of New York, 654 F.2d 856, 865 (2dCir. 1981).

THIS CONFLICT WITH THE DISTRICT COURT'S OWN RULING, OTHER CIRCUIT FEDERAL COURTS AND A STANDARD TEXT ON LAW

THE DISTRICT COURT'S RULING

The District Court in this case ruled in its section "discussion"

> "Thus, a Section 1983 claim has two elements: (1) the defendant acted under color of state law; and (2) as a result of the defendant's action, the plaintiff suffered a deprivation of his rights or privileges secured by the Constitution and laws."
>
> The second requirement, that the plaintiff suffer a deprivation of his rights or privilege secured by the Constitution, requires that the plaintiff specifically allege a violation of the Constitution or an Act of Congress. The United States Supreme Court held:
>
> > Standing alone, Section 1983 clearly provides no protection for civil rights since, as we have just concluded, Section 1983 does not provide any substantive rights at all. To be sure, it may be argued that Section 1983 does in some sense provide for protection of civil rights when it

authorizes a cause of action based upon the deprivation of civil rights guaranteed by other Acts of Congress.

Chapman v. Houston Welfare Rights Organization 441 U.S. 600, 618, 99 S.Ct. 1905, 60 L. ed. 2d 508 (1979)

CONFLICTING OTHER FEDERAL COURT RULINGS

These representative cases are taken from the Notes to 42 U.S.C. Section 1983.

From Note 1181

Violation under this section must be predicated on a deprivation of constitutional right. Bird v. Summit County, Ohio, C.A.6 (Ohio) 1984 730 F 2d 442.

A civil rights complaint must show a deprivation of a right or immunity protected by federal Constitution. Coyle v. Hughs, W.D. Okla. 1977 436 F. Supp. 591

From Note 1204

In order to maintain an action under this section plaintiff must allege facts showing that defendants acted to deprive them of rights privileges and immunities secured by U.S.C. Const. Amenmd 14. Spears v. Robinson C.A. 8 (Mo.) 1970 431 F 2d 1089

To state a cause of action under this section requires allegations of facts which constitutes deprivation under color of state

authority a right guarenteed by U.S.C.A. Const. Amend 14. Schorle v. City of Greenhills, S.D. Ohio 1981 524 F. Supp. 821

CONFLICTS WITH STANDARD TEXT OF LAW

From "Civil Rights and Civil Liberties Litigation. The Law of Section 1983" Fourth Edition Sheldon H. Nahmod The West Group 1997 1998

Section 2:2 Section 1983 and the Fourteenth Amendment: *Monroe v. Pape (365 U.S. 167, 81 S.Ct. 473, 5 L.Ed. 2d 492 (1961))*

The relationship between Section 1983 and the Fourteenth Amendment is best characterized as intimate. Monroe and early cases indicate that the section makes Fourteenth Amendment violations actionable. Consequently, Fourteenth Amendment interpretation significantly determines the scope of the prima facie cause of action under section 1983 for claimed constitutional violations.

REASONS FOR GRANTING THE PETITION

1. This petititon should be granted in that the United States Court of Appeals ruling that "when Section 1983 provides a remedy, an implied cause of action grounded directly in the Constitution is not available" conflicts with U. S. Supreme Court ruling in the *Chapman* case that that"Section 1983 does not provide any substantive right at all." It also conflicts with numerous Federal Courts rulings cited in the notes to 42 U.S.C 1983 that requires alleging facts that deprives Constitutional rights.

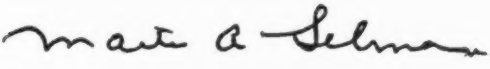
2. This petition should be granted as to the ruling of the District Court that the Fourteenth and Fourth Amendments are "not separate and distinct" from 42 U.S.C. 1985 and that an allegation of a conspiracy requires "some race or related class-based animus." This issue was not addressed by the United States Court of Appeals for the Second Circuit and is in conflict with rulings of the U.S. Supreme Court.

3. The petition should be granted as to the question is whether fabrication of evidence by a state prosecutor and introduced to a Grand Jury to secure an indictment is within the scope of his or her duties and is accorded absolute immunity or is it fundamentally inconsistent with principles of liberty and justice and ther is no absolute or qualified immunity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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November 12, 2003

APPENDICES

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